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State Superintendent of Schools

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May 17, 2013

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Ms. Ann-Marie Spakowski
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #13-070

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On March 18, 2013, the MSDE received a complaint from Mr. XXXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and applicable State regulations with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The HCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s behavioral needs from March 18, 2012 through the end of the 2011-2012 school year¹, in accordance with 34 CFR §§300.320 and .324;

¹ Although the MSDE initially understood that the allegation of violations was ongoing, the complainants subsequently clarified that the period of time to be investigated was between March 18, 2012 and the end of the 2011-2012 school year.

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 2

2. The HCPS did not follow proper procedures when determining the student's educational placement from March 18, 2012 until the end of the 2011-2012 school year¹, in accordance with 34 CFR §§300.114-.116 and .321 and COMAR 13A.05.01.10(C)(1)).
3. The HCPS did not ensure that the student was provided with the interventions required by the student's Behavioral Intervention Plan from March 18, 2012 through the end of the 2011-2012 school year¹, in accordance with 34 CFR §§300.101 and .323;
4. The HCPS did not follow proper procedures when disciplinarily removing the student from March 18, 2012 through the end of the 2011-2012 school year¹, in accordance with 34 CFR § 300.530 and COMAR 13A.08.03; and
5. The HCPS did not ensure that proper procedures were followed when physical restraint and seclusion were used with the student from March 18, 2012 through the end of the 2011-2012 school year¹, in accordance with COMAR 13A.08.04.02, .03, and .05.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 20, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS; and Ms. Eileen Watson, Coordinator of Compliance, HCPS.
3. On April 4, 2013, Ms. Moyo spoke with the student's mother by telephone and clarified the allegations to be investigated.
4. On April 8, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Spakowski of the allegations and requested that her office review the alleged violations.
5. On April 15, 2013, Ms. Moyo and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, reviewed the student's educational record at the HCPS Central Office. Ms. Watson and Ms. Alicia Palmer, Coordinator of Special Education Grants, HCPS were present at the record review. During the record review, Ms. Moyo and Mrs. Arthur conducted a telephone interview with Mr. XXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX). On the same date, Mrs. Arthur conducted a site visit at XXXXXXXXXXXX with Mr. XXXXXXX.
6. On April 15, 2013, Ms. Moyo and Mrs. Arthur conducted a site visit at the XXXXXXXXXXXX (XXXXXX XX) and interviewed the staff listed below.

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 3

- a. Ms. XXXXXXXXXXXXX, Acting Principal;
- b. Ms. XXXXXXXXXXXXX, Speech Language Pathologist; and
- c. Ms. XXXXXXXXXXXXX, Special Education Teacher.

Ms. Watson attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

7. On September 6 and 13, 2012, the HCPS staff provided Ms. Moyo with additional documentation from the student's educational record.
8. On May 14, 2013, Ms. Moyo conducted a telephone interview with the student's mother. On the same day, the student's mother provided the MSDE with documentation related to the allegations being investigated via facsimile.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Behavior Clinic Summary, dated September 23, 2011;
 - b. Behavior report, dated September 30, 2011;
 - c. Behavior reports, dated October 7, 11, and 27, 2011;
 - d. Student Services Team (SST) meeting notes, dated October 28, 2011;
 - e. Behavior reports, dated November 10, 14, and 16, 2011;
 - f. Behavior reports, December 6, 2011;
 - g. Speech/Language assessment report, November 23, 2011;
 - h. SST meeting notes, dated December 8, 2011;
 - i. IEP, dated January 3, 2012;
 - j. SST meeting notes, dated January 26, 2012;
 - k. Electronic mail (email) from the student's mother and school staff, dated February 17, 2012
 - l. Behavior reports, February 29, 2012;
 - m. Behavior reports, March 8, 12, and 16, 2012
 - n. IEP, IEP team meeting notes, and consent for assessment, dated March 16, 2012;
 - o. Behavior reports and referral, dated March 19 and 29, 2012;
 - p. Emails between the student's mother and school staff, dated May 21 and 22, 2012;
 - q. Educational Assessment report, dated March 21, 2012;
 - r. IEP team meeting notes, dated March 22, 2012;
 - s. Daily schedule, dated March 23, 2012;
 - t. *Crisis Plan*, dated April 10, 2012;
 - u. Behavior reports and referral, dated April 11, 24, and 30, 2012;
 - v. Psychological assessment report, dated April 24, 2012;
 - w. Behavior summary, dated May 2, 2012;
 - x. Behavior Plan/Protocol and updated developed during the 2011-2012 school year;
 - y. IEP team meeting notes, dated May 8, 2012;
 - z. Functional Behavioral Assessment, dated May 8, 2012;

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 4

- aa. Behavioral Intervention Plan, dated May 8, 2012;
- bb. IEP team meeting notice, dated May 11, 2012;
- cc. Behavior specialist consultation report, dated May 15, 2012;
- dd. Emails between the student's mother and school staff, dated May 24 and 29, 2012;
- ee. Draft IEP, IEP team meeting notes and sign-in sheet, dated June 5, 2012;
- ff. Central IEP team referral, signed June 11 and 14, 2012;
- gg. Student discipline record for the 2011-2012 school year;
- hh. Attendance record for the 2011-2012 school year;
- ii. IEP team meeting notice, dated August 1, 2012;
- jj. IEP team meeting notes, dated August 14, 2012;
- kk. IEP and meeting notes, dated March 1, 2013;
- ll. Attendance record for the 2012-2013 school year;
- mm. Samples of visual aids used with the student;
- nn. Correspondence and attachments from the complainant to the MSDE, received on March 18, 2013;
- oo. Emails between the student's mother and HCPS staff, dated April 19, 21, 22, and 24, 2013;
- pp. Correspondence from the HCPS staff to the complainants, dated May 6, 2013;
- qq. Correspondence from the HCPS staff to the complainants, dated May 10, 2013

BACKGROUND:

The student is six (6) years old, is identified as a student with an Emotional Disability, and has an IEP that requires the provision of special education instruction and related services. During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the IEP team decisions and notice of the procedural safeguards.

At the start of the 2011-2012 school year, the student attended XXXXXXXXXXXX and was not identified as a student with a disability under the IDEA.

On December 13, 2011, the student was identified as a student with a Speech/Language Impairment under the IDEA and an IEP was developed on January 3, 2012.

On May 8, 2012, the student was identified as a student with an Emotional Disability under the IDEA.

The student began attending XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) at the start of the 2012-2013 school, as a result of a change in placement. He attended XXXXXXXX until September 28, 2012, when he became unable to attend school due to an emotional crisis.

From October 4, 2012 until April 8, 2013, the student was provided with Home and Hospital Teaching (HHT) services. Although the period of time for HHT expired, the complainants have not returned the student to school (Docs. h – j, n, r, y, bb, ee, ff, hh – ll, nn, and qq).

ALLEGATIONS #1, #2, AND #3: ADDRESSING THE STUDENT'S BEHAVIORAL NEEDS, DETERMINING THE EDUCATIONAL PLACEMENT, AND IMPLEMENTING THE BEHAVIORAL INTERVENTION PLAN

Findings of Facts:

March 22, 2012 IEP Team Meeting

1. On March 22, 2012, the IEP team met to determine whether the student's behavior, which resulted in a disciplinary removal from school on March 19, 2012, was a manifestation of his disability. At the meeting, the IEP team considered information from the student's teachers that, since late February 2012, the student had been displaying non-compliant and aggressive behaviors during non-structured periods and when he was required to participate in a non-preferred activity (Docs. a – o).
2. At the March 22, 2012 meeting, the IEP team discussed that it had recently met on March 16, 2012 and decided that the student, who was identified as a student with a Speech/Language Impairment on December 13, 2011, was suspected of being a student with an Emotional Disability. The IEP team considered information that, while the student had been provided with supports in the general education program to address aggressive behavior in the past, such behavior was no longer being demonstrated at the time he was identified with a Speech/Language Impairment on December 13, 2011. The team documented that psychological, educational, and functional behavioral assessments were recommended at the March 16, 2013 meeting, and that behavioral supports were added to the education program pending the re-evaluation. These supports include the use of a visual schedule of daily activities, advance preparation for schedule changes, and crisis intervention services, if needed (Docs. a – o).
3. At the March 22, 2012 meeting, the IEP team decided that, based on the data, behavior that resulted in the disciplinary removal was a manifestation of the student's suspected Emotional Disability (Docs. n and r).

May 8, 2012 IEP Team Meeting

4. On May 8, 2012, the IEP team reconvened and considered the results of the psychological assessment indicating that the student has "superior cognitive ability" and is on-task throughout the majority of classroom instruction, but has difficulty displaying appropriate behavior when interacting with his peers. The report also indicates that the student wants to "demonstrate appropriate behavior, and make 'good choices' at school," but that he displays difficulty "related to regulation of behaviors and emotions, aggressive and/or acting out behavior, impulsivity, and feelings of inadequacy." The report indicates that the student has also displayed instances of withdrawal, depression, difficulty with controlling anger, and hyperactivity, as well as behaviors consistent with

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 6

- Attention Deficit Hyperactivity Disorder (ADHD). It states that the student also demonstrates “inappropriate types of behavior or feelings under normal circumstances” and has an “inability to build or maintain satisfactory relationships with peers and teachers” which is “adversely affecting his overall functioning and his education to a significant degree.” The assessment report contains recommendations for the provision of time to reduce stress, clearly defined rules, limited decision making, modeling, reinforcement of appropriate behaviors, positive feedback, frequent breaks, and opportunities to move and to voice his opinion (Docs. r - y).
5. At the May 8, 2012 meeting, the IEP team also considered the educational assessment report indicating that the student has “superior” reading and math skills and “above average” written language skills (Doc. q).
 6. The IEP team also considered the report of the FBA at the May 8, 2012 meeting. The report contains information that the student displays interfering behaviors when he is not provided with a desired object, when he is experiencing difficulty understanding information that is communicated verbally, and when he is required to remain seated and attend to an activity for an extended period of time. The report notes that the student has responded positively to sensory breaks, incentive plans, positive reinforcement for appropriate behaviors, adult support in class, and social stories (Docs. z and aa).
 7. At the May 8, 2012 meeting, the IEP team decided that, based on the data, the student meets the criteria for identification as a student with an Emotional Disability under the IDEA and that this is the primary disability impacting his education. The team recommended a referral to the behavior specialist and consultation with the “Gifted and Talented” teacher “to investigate a means to meet his educational needs.” At the meeting, a Behavioral Intervention Plan (BIP) was developed. The team agreed to meet again on June 5, 2012, to revise the student’s IEP (Doc. y).
 8. The BIP developed on May 8, 2012 required that the student be provided time with the teacher in the morning to discuss his schedule for the day, explicit instruction on socially appropriate ways to express anger and frustration, encouragement, frequent positive reinforcement and praise for appropriate behaviors. It also required the provision of visuals indicating the expected appropriate behaviors prior to transitions, incentives for appropriate behavior, immediate rewards for appropriate behaviors, and space in the classroom to calm himself and take breaks (Doc. aa).
 9. The team documented the complainants’ disagreement with the decision that the primary disability is an Emotional Disability and their belief that his primary disability is Other Health Impairment (OHI) related to ADHD. The team also documented that it discussed that the decision was based on the results of the assessments, and that the complainants were advised of their rights under the IDEA (Doc. y).

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 7

10. On May 15, 2012, the behavior specialist observed the student, reviewed records, and provided feedback to the student's teachers regarding the implementation of the interventions in the BIP (Doc. cc).
11. There is documentation, including electronic correspondence between school staff and the student's mother, that the student was provided with the interventions required by the BIP developed on May 8, 2012. The documentation reflects that the student was provided with a daily schedule indicating what he would be doing throughout the day, including when sensory breaks and transitions would occur. It also reflects that the student was provided with visuals that he could use to indicate the need for a break and to determine appropriate behaviors in order to receive rewards for appropriate behaviors, worksheets to assist him with identifying and tracking his emotions and the responses to these emotions, and visuals to assist him with developing methods to calm himself (Docs. cc, dd, ff, gg and mm).

June 5, 2012 IEP Team Meeting

12. On June 5, 2012, the IEP team, including the "Gifted and Talented" Specialist, reconvened and considered information from the student's teachers and the school psychologist that, with the provision of intense behavioral supports, there had been some progress, but the student continued to demonstrate interfering behaviors and "struggling to participate with his peers in the classroom." The complainants expressed their desire that the student develop social skills, and indicated that they had noticed that his behavior had improved "very recently" (Doc. ee).
13. At the June 5, 2012 meeting, the team revised the IEP to include the student's present levels of performance in the area of social, emotional, and behavioral skills, goals for the student to improve these skills, and supports to assist him to achieve the goals. However, the team determined that, even with the provision of supplementary aids and services, the IEP could not be implemented in the general education classroom, or a combination of the general and special education classrooms. The team decided to reconvene with the participation of the HCPS Central Office staff to determine the appropriate educational placement for the student (Doc. ee).

August 14, 2012 IEP Team Meeting

14. On August 14, 2012, the IEP team reconvened with the participation of HCPS Central Office staff and determined that the IEP can be implemented in both the general and separate special education classrooms in a school that can provide additional behavioral supports, which is not the school the student would attend if he was not disabled. The team also considered the complainants' belief that it would not be necessary to change the student's placement, if the school system implemented the behavioral strategies implemented at home. Based on their review, the team determined that the student requires another placement (Docs. ff and jj).

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 8

Discussion/Conclusions:

Allegation #1: Addressing the Behavioral Needs

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present level of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals. If the IEP team determines the need for additional data in order to determine present levels of performance, the results of assessment procedures must be used by the IEP team in reviewing, and as appropriate, revising the IEP, within 90 days of the recommendation to obtain the data (34 CFR §§300.101 and .320 and COMAR 13A.05.01.06).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #1 - #10 and #12 - #14, the MSDE finds that the IEP team considered information from the complainants, reports from the student's teachers and related service providers, evaluation data, and based on this information, developed the annual goals, and determined the special education instruction, and the supports needed to address the student's identified social and emotional needs, consistent with the data. Based on the Findings of Facts #1 - #10 and #12 - #14, the MSDE finds that school staff continuously monitored the student's progress with the provision of the services and supports, and determined strategies to address the student's identified behavioral needs.

However, based on the Findings of Facts #1 and #4 and #12 - #14, the MSDE finds that the HCPS did not ensure that the additional data determined necessary by the IEP team, on March 16, 2012 was used by the team to review and revise the IEP, within the required timelines. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2: Determining the Educational Placement

To the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. In determining the least restrictive environment in

which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 and .116).

The educational placement must also be as close as possible to the student's home. Unless the IEP requires another arrangement, the student must be educated in the school that the student would attend if nondisabled (34 CFR §300.116).

Based on the Findings of Facts #12 - #14, the MSDE finds that the IEP team considered less restrictive environments in which the IEP can be implemented with the provision of supplementary aids and services, as well as any potential harmful effects on the student or the services he needs when making the educational placement determination. Based on those Findings of Facts, the MSDE also finds that the IEP team considered whether the IEP can be implemented in the school the student would attend if not disabled, and decided that the IEP would be implemented in a different school due to the student's need for additional behavioral supports. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #3: Implementation of the BIP

The public agency is required to ensure that students are provided with the special education and related services required by the IEP (34 CFR §300.101 and .323). Based on the Findings of Facts #7, #8, and #11, the MSDE finds that there is documentation that the BIP was developed on May 8, 2012. Further, based on the same Findings of Facts, the MSDE finds that the student was provided with the behavior supports required by the BIP from May 8, 2012 until the end of the 2011-2012 school year. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #4: **DISCIPLINARY REMOVALS**

Findings of Facts:

15. The student's disciplinary record documents that during the 2011-2012 school year he was disciplinary removed from school for a total of seven and a half (7.5) days as indicated below.

November 17, 2011 – removed for 1 day;
March 9, 2012 – removed for 1.5 days;
March 13, 2012 – removed for 3 days; and
March 19, 2012 – removed for 3 days (Docs. r, w, gg, and hh).

Discussion/Conclusions:

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of 10 school days in a school year (34 CFR §300.530). Based on

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 10

the Finding of Fact #21, the MSDE finds that there is no documentation that the student was disciplinarily removed from school in excess of 10 school days during the 2011-2012 school year. Therefore, this office finds that the IDEA protections do not apply and does not find that a violation occurred with respect to this allegation.

ALLEGATION #5: USE OF SECLUSION AND PHYSICAL RESTRAINT

Findings of Facts:

16. There is documentation that physical restraint was used with the student on March 29, 2012, April 11, 2012, April 24, 2012, and April 30, 2012. The documentation indicates that the behavioral intervention was used in response to an emergency situation in which it was necessary to protect the student and others from physical harm. The documentation also reflects the alternative approaches that were considered and determined to be inappropriate and contains information about the school staff involved in each incident. However, the documentation does not describe the type of restraint used or the duration of the restraint (Doc. u).
17. The incidents of April 11, 2012, April 24, 2012, and April 30, 2012 are documented on a form containing boxes to be “checked off” indicating the type of behavior intervention used. Each form has a place to note if the form is being completed following the use of a restraint, seclusion, or exclusion. For each of these three (3) dates, the forms indicated that the student was both restrained and secluded. However, the written narrative of the events that occurred on these dates reflects that, in addition to the use of physical restraint, the student was removed from the classroom to the 5th grade pod, an open area of space, in order to calm down (Doc. u).
18. There is no documentation that the student has been confined in a room from which he was physically prevented from leaving (Doc. u and review of the educational record).
19. The documentation of the incidents that occurred on March 29, 2012, April 11, 2012, April 24, 2012, and April 30, 2012 state that the complainants were informed of each incident on the date that the incident occurred (Doc. u).
20. There is documentation that on May 2, 2012, the student was escorted to the school office by two members of the school staff, each of whom held one of the student’s arms (Doc. w).

Discussion/Conclusions:

In this case, the complainants allege that seclusion and physical restraint were improperly used with the student, that the setting used for seclusion did not meet the State requirements, and that they were not informed of the use of these behavioral interventions within the required timelines.

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 11

Use of Seclusion

Seclusion is the confinement of a student alone in a room from which the student is physically prevented from leaving (COMAR 13A.08.04.02). The room used for seclusion must be free of objects and fixtures with which a student could self-inflict bodily harm. The room used for seclusion must also provide school personnel with an adequate view of the student from an adjacent area and it must also provide adequate lighting and ventilation (COMAR 13A.08.04.05).

Based on the Findings of Facts #17 - #18, the MSDE finds that the forms documenting the use of seclusion on April 11, 2012, April 24, 2012, and April 30, 2012 and containing written narratives of the actions taken, indicate that exclusion was used with the student and that he was not placed in seclusion.

Based on these Findings of Facts, the MSDE finds that there is no documentation that seclusion was used with the student. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Use of Physical Restraint

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of the student's body. It does not include:

1. Briefly holding the student to calm or comfort the student;
2. Holding the student's hand or arm to escort the student safely from one area to another;
3. Moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or
4. Intervening in a fight (COMAR 13A.08.04.02).

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed, or been determined inappropriate. Physical restraint is also permitted if the student's BIP or IEP describes specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A(1)(a)).

Physical restraint must be discontinued as soon as the student is calm and its use may not exceed thirty (30) minutes (COMAR 13A.08.04.05A(1)(d)). When utilizing physical restraint, school personnel may not place a student in a face-down position. School personnel may not place a student in any other position that will obstruct the student's airway or otherwise impair the student's ability to breathe. School personnel may not place a student in a position that will

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 12

obstruct a staff member's view of the student's face, restrict the student's ability to communicate distress, or place pressure on the student's head, neck, or torso. School personnel may not straddle the student's torso (COMAR 13A.08.04.05A(1)(e)).

Further, each time that physical restraint is used, school staff must document the incident. This documentation must include information about the type of restraint used and the length of time in restraint (COMAR 13A.08.04.05(3)).

Based on the Finding of Fact #20, the MSDE finds that the documentation does not indicate that physical restraint was utilized with the student when the student was escorted to the office by school staff, on May 2, 2012.

Based on the Finding of Fact #16, the MSDE finds that there is documentation that physical restraint was used to protect the student and others from physical injury during emergency situations that arose on March 29, 2012, April 11, 2012, April 24, 2012, and April 30, 2012. However, based on the Finding of Fact #16, the MSDE finds that there is no documentation that the physical restraint was used in accordance with State requirements on those dates. Therefore, the MSDE finds that violations occurred with respect to the use of physical restraint on these dates.

Notice of the Use of Seclusion and Physical Restraint

Each time that seclusion or physical restraint is used, the parents must be provided with verbal or written notification of the incident within 24 hours unless otherwise provided for in the IEP or behavior intervention plan (COMAR 13A.08.04.05). Based on the Finding of Fact #19, the MSDE finds that there is documentation that the complainants were provided with notice of each incident of physical restraint within the required timelines. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the HCPS to provide documentation by the start of the 2013-2014 school year that the IEP team has considered whether the delay in completing the reevaluation and the violation related to the use of physical restraint had a negative impact on the student's ability to benefit from his education program, and if so, has determined the amount and nature of compensatory services or other remedy for the violation.

The HCPS must provide the complainants with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or to file a due process complaint, in accordance with the IDEA.

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 13

School-Based

The MSDE requires the HCPS to provide documentation by the start of the 2013-2014 school year that steps have been taken to determine whether the violations related to the delay in completion of the reevaluation and the use of physical restraint constitute a pattern of noncompliance at XXXXXXXX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the HCPS.

Documentation of the corrective action taken is to be submitted to this office to the attention of Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional

XXX

Ms. Ann-Marie Spakowski

May 17, 2013

Page 14

findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF/km

cc : Robert M. Tomback

Eileen Watson

XXXXXXXXXXXX

Dori Wilson

Anita Mandis

Martha J. Arthur

Koliwe Moyo